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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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WILLIAM A. MUNDELL
CHAIRMAN

APR 18 2002

JIM IRVIN
COMMISSIONERMARC SPITZER
COMMISSIONER

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
THE ARIZONA ELECTRIC DIVISION OF
CITIZENS COMMUNICATIONS COMPANY TO
CHANGE THE CURRENT PURCHASED POWER
AND FUEL ADJUSTMENT CLAUSE RATE, TO
ESTABLISH A NEW PURCHASED POWER AND
FUEL ADJUSTMENT CLAUSE BANK, AND TO
REQUEST APPROVED GUIDELINES FOR THE
RECOVERY OF COSTS INCURRED IN
CONNECTION WITH ENERGY RISK
MANAGEMENT INITIATIVES.

DOCKET NO. E-01032C-00-0751

PROCEDURAL ORDER**BY THE COMMISSION:**

The Arizona Electric Division ("AED") of Citizens Communications Company ("Citizens") serves approximately 59,000 customers in Mohave County and 16,000 customers in Santa Cruz County. On September 28, 2000, Citizens' AED filed with the Arizona Corporation Commission ("Commission") an application to change the current purchased power and fuel adjustment clause rate ("PPFAC"), to establish a new PPFAC bank, and to begin accruing carrying charges and to request approved guidelines for the recovery of costs incurred in connection with energy risk management initiatives ("Application"). Citizens filed an amended application on September 19, 2001, and errata to the amended application on September 26, 2001. By its amended Application, Citizens seeks, among other things, to recover nearly \$100 million from AED ratepayers in Mohave and Santa Cruz Counties for the PPFAC bank's under-recovered balance.

Mr. Magruder's Motion

On March 13, 2002, Mr. Marshall Magruder, an intervenor in this proceeding, filed a Motion to Recuse ("Motion") which raised the issue of a possible conflict due to the Gallagher & Kennedy law firm's representation of Citizens in this case. Mr. Magruder alleged that because one of the firm's founding partners, Michael Gallagher, is a member of the Board of Directors of Pinnacle West Capital Corporation ("PWC") and Arizona Public Service Company ("APS"), he owes a legal duty to

1 promote the interests of those companies' shareholders. Mr. Magruder argued that the alleged failure
2 of Citizens to actively pursue contract overcharges by APS during 2000 and 2001 creates the
3 appearance that Mr. Gallagher's directorships on the PWC and APS Boards may affect his firm's
4 representation of Citizens in this case. Mr. Magruder therefore seeks to have Gallagher & Kennedy
5 removed as counsel for Citizens in this case.

6 A procedural conference was held on March 21, 2002, and oral arguments were heard on Mr.
7 Magruder's Motion. The procedural conference reconvened on Friday, March 22, 2002 for
8 additional argument, at which time the presiding Administrative Law Judge directed that additional
9 briefing on the issues raised by the Motion were necessary. Additional oral arguments were
10 scheduled for April 1, 2002. Consequently, the evidentiary portion of the hearing was continued,
11 pending resolution of the Motion.

12 On March 26, 2002, Citizens filed the Affidavit of Marie Papietro, attesting to her knowledge
13 of discussions at various Board of Directors meetings for both PWC and APS. Briefs were filed
14 regarding the Motion on March 28, 2002 by Citizens, Staff, the Arizona Utility Investors Association
15 ("AUIA"), the Residential Utility Consumer Office ("RUCO"), and Mohave and Santa Cruz Counties
16 (collectively, the "Counties"). On March 29, 2002, Citizens filed the Affidavit of L. Russell Mitten,
17 Citizens' Vice President and General Counsel, attesting to the sequence of events that resulted in
18 Citizens retaining Michael Grant of the law firm Gallagher & Kennedy. On April 1, 2002, additional
19 oral argument was held as scheduled regarding the Motion. At the direction of the Administrative
20 Law Judge, Citizens filed on April 3, 2002, waivers signed by APS/PWC and Citizens regarding
21 Gallagher & Kennedy's conflict of interest with respect to the firm's representation of Citizens.

22 **Background**

23 The facts surrounding the issue now before the Commission are not in dispute. During 2000
24 and 2001, a billing dispute arose concerning a 1995 Power Service Agreement ("PSA") between
25 Citizens and APS/PWC. Citizens ultimately negotiated a 2001 PSA with PWC in July 2001 to
26 replace the 1995 agreement. Citizens was represented in the contract dispute and negotiation of the
27 new agreement by the law firms of Wright & Talisman, Troutman Sanders, Brown & Bain, and
28 others. The law firm of Gallagher & Kennedy, which represents Citizens in this proceeding, did not

1 represent Citizens or APS/PWC in any negotiations, contractual disputes, or analysis of potential
2 administrative or judicial remedies concerning the 1995 or 2001 PSAs. Gallagher & Kennedy
3 commenced representation of Citizens in this PPFAC proceeding after the original application was
4 filed in September 2000. Gallagher & Kennedy's appearance on behalf of Citizens was entered on
5 November 27, 2000.

6 Michael Gallagher, a founding member of the law firm Gallagher & Kennedy, has served on
7 the Board of Directors of APS since 1997 and has served on the Board of Directors of PWC since
8 1999. During his tenure on those Boards, he does not recall ever voting on any purchased power
9 contracts between APS/PWC and Citizens and, indeed, it appears that the Boards of APS and PWC
10 did not vote on any of those purchased power agreements. However, according to the minutes of
11 APS/PWC Board meetings, Mr. Gallagher was present on four occasions between September 2000
12 and October 2001 when the Boards of APS or PWC were briefed and/or discussed matters concerning
13 billing disputes between APS and Citizens. The affidavits indicate that no issues involved in this
14 PPFAC case have been discussed with Mr. Gallagher by any attorney or employee at Gallagher &
15 Kennedy.

16 Due to Gallagher & Kennedy's representation of APS/PWC in other matters, as well as Mr.
17 Gallagher's membership on the APS/PWC Boards, Gallagher & Kennedy sought and received from
18 APS/PWC, on December 14, 2000, a waiver of the potential conflict of interest that exists because of
19 Gallagher & Kennedy's representation of Citizens in the PPFAC proceeding. The APS/PWC waiver
20 was conditioned on Gallagher & Kennedy not representing Citizens in negotiations concerning the
21 long-term contracts between Citizens and APS, or in any other matter directly adverse to APS/PWC
22 or other PWC entities. The waiver was also conditioned on obtaining Citizens' agreement that it
23 would not seek to disqualify Gallagher & Kennedy from representing APS/PWC in any matter that is
24 not directly adverse to Citizens. Citizens consented to the condition imposed by APS/PWC by letter
25 dated January 10, 2001.

1 **Citizens' Arguments**

2 Through its various responsive pleadings and affidavits, Citizens raises a number of
3 arguments in support of its claim that the Commission should not disqualify Gallagher & Kennedy
4 from representing it in this case. Citizens claims that the following undisputed facts should be
5 observed in deciding the issue of disqualification: 1) Gallagher & Kennedy has not represented
6 Citizens, PWC or APS in any contractual disputes or negotiations; 2) in contractual dispute
7 negotiations with PWC and APS, Citizens has used separate counsel; 3) key decisions regarding the
8 contractual dispute issues were made months before Gallagher & Kennedy was retained by Citizens;
9 4) Gallagher & Kennedy policy precludes Mr. Gallagher from involvement in any of the firm's
10 matters concerning PWC or APS; 5) Mr. Gallagher does not recall any of the four informational
11 updates regarding Citizens that took place at four separate PWC or APS Board meetings; 6) Mr.
12 Gallagher never discussed those updates with any attorneys with Gallagher & Kennedy; 7) the PWC
13 and APS Boards never voted or took action on any power supply matters involving Citizens; 8) none
14 of the issues involved in this PPFAC proceeding have been discussed with Mr. Gallagher and, until
15 recently, Mr. Gallagher was unaware of Gallagher & Kennedy's representation of Citizens in this
16 matter; 9) Gallagher & Kennedy's representation was disclosed and consented to by PWC and APS,
17 as well as Citizens; 10) prior to the filing of the Motion to Recuse, Citizens submitted testimony by
18 Paul Flynn and Sean Breen addressing Citizens' contract dealings with APS and PWC, and
19 addressing Citizens' decision regarding whether to pursue legal remedies against APS and PWC; and
20 11) Gallagher & Kennedy's disqualification would cause substantial and irreparable harm to Citizens.
21 According to Citizens, there is no evidence that this PPFAC case is jeopardized by Mr. Gallagher's
22 membership on the APS and PWC Boards, or that Citizens' decision whether to pursue APS and
23 PWC in court or at the FERC was affected by Mr. Gallagher's involvement on those Boards.

24 Citizens also claims that it is entitled to the counsel of its choice, absent compelling evidence
25 and an overriding public interest in disqualifying the client's chosen counsel. According to Citizens,
26 no conflict exists in this case pursuant to ER 1.7 of the Rules of Professional Conduct because there
27 is no directly adverse relationship between APS/PWC and Citizens with respect to this PPFAC filing.
28 Gallagher & Kennedy asserts that in order to avoid any possibility of conflict, it undertook

1 representation of Citizens with the understanding that the firm would not represent either Citizens or
2 APS/PWC in power supply matters. In addition, Gallagher & Kennedy reiterates that it obtained the
3 written consent of both Citizens and APS/PWC prior to its representation of Citizens in this matter.
4 Gallagher & Kennedy further contends that the decisions regarding the power supply contracts,
5 including any administrative or litigation options available to Citizens, were made exclusively by
6 Citizens without any input by Gallagher & Kennedy.

7 Citizens argues that disqualification of attorneys and entire firms has usually been granted
8 only in instances where attorneys switch sides during litigation, and the safeguards imposed by the
9 firms are not sufficient to overcome the taint of conflict from the prior representation. Citizens cited
10 several cases where the facts fit this pattern but noted that, unlike this proceeding, in each of the cited
11 cases one client objected to the representation because of an attorney's prior representation of the
12 same client. Citizens discusses the case of *Petroleum Wholesale, Inc. v. McClellan*, 751 S.W.2d 295
13 (Tex. App. 1988), which involved an attorney who worked at the plaintiff's firm and participated in
14 confidential discussions regarding the case before accepting a position with the firm representing the
15 defendant. Although the defendant's firm set up a "Chinese Wall" to screen the attorney from
16 discussions involving the case, the court held that the firm's actions were not sufficient to remove the
17 taint of impropriety. *Id.* at 301. Citizens argues that, unlike the facts in *Petroleum Wholesale*, Mr.
18 Gallagher has no knowledge of the power supply agreements between Citizens and APS/PWC, he has
19 never discussed those agreements with any attorneys at Gallagher & Kennedy, and the firm's
20 screening process prevents Mr. Gallagher from becoming involved in any matters regarding legal
21 advice rendered to APS or PWC. Citizens claims that, in any event, there is no aggrieved party
22 because both Citizens and APS/PWC consented to Gallagher & Kennedy's representation in this
23 matter.

24 Citizens also relies heavily on the case of *Gomez v. Superior Court*, 149 Ariz. 223 (1986) for
25 the proposition that disqualification of counsel based on the appearance of impropriety will be
26 permitted only in rare cases. In that case, the Arizona Supreme Court stated that, although the
27 "appearance of impropriety" prohibition no longer exists in the Rules of Professional Conduct, the
28 standard survives as a component of conflict of interest considerations. The Court found, however,

1 that the appearance of impropriety "should not be used promiscuously as a tool for disqualification."
2 *Id.* at 225, *quoting International Electronics Corp. v. Flanzer*, 527 F.2d 1288, 1295 (2d Cir. 1975).
3 The Court in *Gomez* used a four-prong test for considering a motion for disqualification based on
4 appearance of impropriety. The criteria cited by the Court are: 1) whether the motion is being made
5 for the purposes of harassing the defendant; 2) whether the party bringing the motion will be
6 damaged in some way if the motion is not granted; 3) whether there are any alternative solutions, or
7 is the proposed solution the least damaging possible under the circumstances; and 4) whether the
8 possibility of public suspicion will outweigh any benefits that might accrue due to continued
9 representation. *Id.* at 226, *quoting Alexander v. Superior Court*, 141 Ariz. at 165 (1984). Citizens
10 argues that, although the Motion to Recuse may not have been filed for the purpose of harassment,
11 that will be the result if the Motion is granted because Citizens will incur inconvenience, delay, and
12 additional costs¹. Citizens also claims that the public's perception will not be harmed by denial of the
13 Motion because Citizens will present the same case regardless of the firm that represents it.

14 Citizens asserts that other jurisdictions also require that the party seeking disqualification
15 must present some evidence of identifiable improper conduct before disqualification will result due to
16 the appearance of impropriety. According to Citizens, there has been no violation of an ethical rule
17 in this case and, in fact, Gallagher & Kennedy exceeded all ethical standards. Citizens disputes the
18 Motion's allegations that Gallagher & Kennedy did not actively pursue alleged overcharges by APS
19 during the period of May 2000 through May 2001 because, as indicated previously, the firm did not
20 represent Citizens with respect to any power supply disputes or negotiations with APS. Moreover,
21 according to Citizens, its decision to enter into a new contract with APS was based on the expert
22

23 ¹ According to the affidavit submitted by L. Russell Mitten, Citizens' Vice President and General Counsel,
24 disqualification will severely prejudice Citizens because it will lose Gallagher & Kennedy's 15 months of familiarity with
25 the case and will necessitate further delay in the hearing. Mr. Mitten also claims that the additional delay resulting from
26 disqualification will cost Citizens approximately \$750,000 per month in lost carrying charges on the PPFAC
27 undercollection. It should be noted that the timing of this proceeding has been directly affected by Citizens' actions. By
28 Procedural Order issued November 17, 2000, Citizens was directed to file an amended application once it had completed
its audit of the contract with APS. However, Citizens did not file its amended application until September 19, 2001 (as
further amended on September 26, 2001). From that point, this matter proceeded in a routine manner with the filing of
testimony, processing of intervention requests, and other procedural decisions. It was not until the conflict of interest
issue arose that the hearing was delayed. In any event, Citizens should not now be heard to complain that the carrying
charges it has apparently incurred on the PPFAC costs are unfair when, in fact, any delays in this proceeding are directly
attributable to Citizens' own actions.

1 advice and counsel of other attorneys not employed by Gallagher & Kennedy.

2 The final argument raised by Citizens is that the Commission does not have jurisdiction to
3 regulate the conduct of attorneys by imposing an additional layer of ethical requirements that are not
4 authorized by the Arizona Supreme Court. Citizens contends that the Commission is an agency of
5 limited jurisdiction, and any attempt by the Commission to impose conditions on the practice of law
6 beyond those required by the Arizona Supreme Court would interfere with powers entrusted to the
7 judiciary.

8 **Discussion**

9 The disqualification of an attorney or a firm from a proceeding is not a matter that the
10 Commission takes lightly. However, the Commission has an obligation, pursuant to the authority
11 granted by Article XV of the Arizona Constitution, to ensure that its procedures are conducted, and
12 its decisions are rendered, in a manner that enhances the public trust.

13 Gallagher & Kennedy appears to have made efforts to meet the standards imposed by ER 1.7
14 of the Rules of Professional Conduct by advising both APS/PWC and Citizens of the potential
15 conflict, by agreeing not to represent Citizens in matters concerning the purchased power contracts
16 between Citizens and APS/PWC, by obtaining the written consent of those entities to Gallagher &
17 Kennedy's representation of Citizens in this proceeding, and by shielding Mr. Gallagher from
18 discussions regarding this PPFAC proceeding. However, even Gallagher & Kennedy concedes that
19 compliance with ER 1.7 does not necessarily end the inquiry regarding conflicts of interest.

20 As discussed above, Gallagher & Kennedy acknowledges that the Arizona Supreme Court has
21 recognized "appearance of impropriety" as a factor that must be considered when a request for
22 disqualification has been raised due to a conflict of interest. The Court's decision in *Gomez* laid out
23 four factors to be considered in evaluating the appearance of impropriety. With respect to the first
24 factor described in *Gomez*, Citizens does not claim, and there is no evidence to suggest, that Mr.
25 Magruder's Motion was intended to harass Citizens or that it was not made in good faith. Although
26 Citizens claims that the result of Gallagher & Kennedy's disqualification would amount to
27 "harassment," *Gomez* requires only that an evaluation be made as to whether the motion was made
28 for purposes of harassment. Here, there is no such indication.

1 The second factor to be considered is whether the party bringing the motion will be harmed if
 2 the motion is not granted. Although there is nothing in the record that indicates Mr. Magruder will be
 3 personally damaged by Gallagher & Kennedy's continued representation, as discussed below the
 4 public interest on behalf of Citizens' customers could be affected by the Commission's decision on
 5 this issue.

6 The third factor in *Gomez* is whether there are any alternative solutions. The only alternative
 7 solution to disqualification that has been presented to this point is the Counties' suggestion that the
 8 Commission should regard Citizens' waiver of the Gallagher & Kennedy conflict of interest as a part
 9 of its overall analysis of the conduct by Citizens in its dealings with APS. For the reasons discussed
 10 below, we do not believe that the Counties' suggested alternative addresses the underlying issue
 11 related to the appearance of impropriety².

12 The Gomez "Public Suspicion" Factor

13 The fourth and final factor stated in *Gomez* is whether the possibility of public suspicion will
 14 outweigh any benefits that might accrue due to the firm's continued representation. Citizens
 15 dismisses this factor with the assertion that the public perception will not be harmed because Citizens
 16 would have made the same presentation in this proceeding regardless of Gallagher & Kennedy's
 17 representation. Although Citizens' claim may very well be true, it does not address the concern
 18 expressed by the Court in *Gomez* regarding the importance of "public perception." Citizens argues
 19 that there is no support for the proposition that the public must have a "good" perception of the
 20 proceeding, and it cites *United States Fire Ins. Co.*, 50 F.3d at 1316, in which the court stated that an
 21 attorney's conduct should not be governed by standards imputed only to the "most cynical members
 22 of the public."

23 Unlike the "most cynical citizen" standard enunciated in that case, this proceeding involves a
 24 Motion by a concerned member of the public who is also an intervenor. The former director of the
 25 Mohave County Economic Development Authority also expressed concern as to why Citizens did not
 26 attempt to litigate its billing dispute with APS but, instead, settled the dispute by renegotiating a new

27 ² On April 5, 2002, the Counties filed a Motion for Findings of Fact or, in the Alternative, a Stay of the Proceedings.
 28 Responses to the Counties' Motion were filed on April 15, 2002 by Citizens, Staff, AUIA, RUCO, and Mr. Magruder.
 The merits of the Counties' Motion will be addressed by a subsequent Order.

1 long-term power supply contract (March 25, 2002 Tr. 17-18). Although the Counties do not
2 advocate disqualification, they agree that Gallagher & Kennedy has a conflict of interest with respect
3 to its representation of Citizens in this case. Other parties to this case have also expressed concern
4 with the appearance of impropriety of Gallagher & Kennedy's representation. For example, RUCO
5 stated that the Commission should disqualify Gallagher & Kennedy in this case due to the appearance
6 of impropriety (April 1, 2002 Tr. 51). Indeed, even AUIA's representative initially expressed to
7 Gallagher & Kennedy some of the same concerns raised in Mr. Magruder's Motion (See, March 21,
8 2002 Tr. 34).

9 Staff also recommends disqualification. Staff contends that the "firewall" created to address
10 Mr. Gallagher's membership on the APS and PWC Boards does not resolve the appearance of
11 impropriety issue. Staff asserts that, even if counsel other than Gallagher & Kennedy advised
12 Citizens not to litigate its contract dispute with APS, the contract dispute issue is inextricably
13 intertwined with this case because Staff and RUCO advocate litigation against APS with respect to
14 the contract billing dispute. Staff further argues that, due to concerns with public perception of the
15 fundamental fairness of its processes, the Commission should disqualify Gallagher & Kennedy from
16 this case to avoid the appearance of impropriety. Staff contends that an objective observer could
17 conclude that Citizens' decision to abandon litigation against APS is an indication that Citizens and
18 APS have simply agreed to let ratepayers bear the PPFAC costs and avoid the necessity of litigation.
19 Staff adds that, contrary to Citizens' assertions, the Commission's review of this issue does not
20 constitute an attempt to regulate the practice of law, but instead involves the Commission's legitimate
21 concern with the fundamental fairness of its proceedings. Staff cites *State ex. rel. Corbin v. Arizona*
22 *Corporation Commission*, 143 Ariz. 219 (App. 1984) to support its assertion that the Commission has
23 broad discretion to fashion remedies to ensure that its proceedings are not defiled or corrupted. Staff
24 concludes that, although it does not claim that Gallagher & Kennedy's actions constitute an actual
25 conflict of interest, the integrity of the Commission's process is threatened by the firm's continued
26 representation of Citizens. Staff therefore recommends that Gallagher & Kennedy be disqualified
27 from this proceeding.

1 **Conclusion**

2 After reviewing the arguments made by all parties to this case, it is clear that it is not solely
3 the most cynical member of the public who could be of the opinion that an appearance of impropriety
4 may exist with Gallagher & Kennedy's continued representation of Citizens. Rather, the entire
5 spectrum of participants in this case had concerns, at least initially, that a conflict of interest may be
6 presented by Gallagher & Kennedy's representation. Although Gallagher & Kennedy attempted to
7 resolve the conflict of interest concerns by securing waivers from both APS/PWC and Citizens, the
8 Commission's public perception or suspicion concerns are not necessarily satisfied by the firm's
9 actions. The Commission must also take into account whether the parties most affected by the
10 outcome of this proceeding, Citizens' ratepayers, can have confidence that the Commission's process
11 is honest, fair, and untainted by even the perception of impropriety.

12 The Commission is uniquely qualified to evaluate the public interest concerns associated with
13 its proceedings. Unlike civil or criminal trial court proceedings, where the litigants may be the only
14 parties directly affected by the outcome of the case, Commission proceedings such as this one are
15 affected with the public interest because the outcome has a direct and immediate affect on the utility
16 company's ratepayers. In this case, Citizens' electric customers in Mohave and Santa Cruz Counties
17 are being asked to pay approximately \$100 million for the under-recovered PPFAC balance.
18 Therefore, it is especially critical that the customers who may ultimately be responsible for payment
19 of the PPFAC costs have confidence that the Commission's process and procedures are inherently
20 fair and afford all affected parties full due process.

21 As discussed above, Citizens submitted the consent agreement from APS wherein APS agreed
22 that Gallagher & Kennedy could represent Citizens, as long as that representation is not adverse to
23 APS' interests. This conditional consent is problematic to the extent that Gallagher & Kennedy's
24 representation in this case is restricted to presenting a case that is not adverse to APS. For example,
25 Gallagher & Kennedy is precluded by the consent agreement from pursuing a legal strategy that
26 advocates litigation by Citizens against APS, even though some parties have asserted that Citizens
27 should have litigated the power supply dispute with APS rather than negotiating a new agreement.
28 The consent provided by APS restricts the scope of Gallagher & Kennedy's representation in a way

1 that may preclude the firm from considering all applicable theories or strategies and, if the
2 Commission agrees with Staff and RUCO that litigation should have been pursued by Citizens
3 instead of renegotiating the contract with APS, Citizens will have been unable to build a record that
4 will be helpful in subsequent proceedings against APS. Moreover, although Citizens argued that
5 there could be no "aggrieved" party because it had obtained that conflict waivers from both Citizens
6 and APS/PWC, the argument ignores the fact that the real potentially "aggrieved party" is the class of
7 ratepayers who Citizens seeks to be held responsible for the PPFAC costs.

8 As indicated previously, no party alleges that Gallagher & Kennedy or Mr. Grant engaged in
9 any unethical activity with respect to this matter. In fact, it appears that Gallagher & Kennedy
10 attempted to comply with the Code of Professional Conduct by disclosing the firm's conflicts to
11 Citizens and APS and getting waivers from both counsel. However, there is an inherent conflict that
12 arises from the fact that a founding member of the firm representing the Applicant in this case also
13 served on the Board of Directors for the entities that were at one point embroiled in a dispute that had
14 a direct effect on the PPFAC costs being sought in this case. Although the Boards of APS and PWC
15 were apparently never asked to vote on the power contracts, the Directors, including Mr. Gallagher,
16 were briefed regarding the Citizens billing dispute on at least four separate occasions. More
17 importantly, during the pendency of the Citizens dispute with APS/PWC, as well as during the
18 renegotiation of the purchased power contract, Mr. Gallagher owed a fiduciary duty to act in the best
19 interests of the shareholders of APS/PWC. *See, William H. Raley Co., Inc. v. Superior Court*, 149
20 Cal.App.3d 1042, 1047 (1983) (conflict created by fiduciary duty of Board member to defendant
21 company when the Board member was a partner of a law firm that represented plaintiffs). Under the
22 standards enunciated by the Arizona Supreme Court in *Gomez*, the conflict and potential for public
23 suspicion are simply too great to be overcome by a consent from Gallagher & Kennedy's counsel.

24 Accordingly, Gallagher & Kennedy is disqualified from representing Citizens in this
25 proceeding.

26 IT IS THEREFORE ORDERED that Gallagher & Kennedy is disqualified from representing
27 Citizens in this proceeding.

28 IT IS FURTHER ORDERED that any objections to this Procedural Order shall be filed by no

1 later than April 24, 2002.

2 IT IS FURTHER ORDERED that if the Commission takes no action regarding any such
3 objections by April 30, 2002, the objections will be deemed denied.

4 IT IS FURTHER ORDERED that Citizens shall file in this docket as soon as is practicable,
5 the appearance of substitute counsel, as well as an indication of when Citizens will be prepared to
6 proceed in this matter.

7 DATED this 18th day of April, 2002.

8 

9 DWIGHT D. NODES
10 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

11 Copies of the foregoing mailed/delivered/faxed
12 this 18th day of April, 2002 to:

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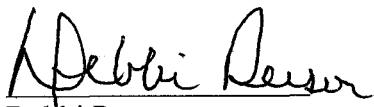
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